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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 24th January, 2019

+ CRL.M.C. 624/2016 and Crl.M.A.2572/2016

SHANTI KUMAR RAMSISARIA & ANR. Petitioners

Through: Mr. Prabhat Kumar, Advocate with
Mr. R.P. Singh, Mr. Harendra Singh,
Ms. Swati Srivastava, Advocates

Versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Sanjeev Sabharwal, APP for the
State with Insp. K.P. Shah, SHO PS
Model Town, & SI Tej Singh.

Mr. Devendra Kumar Singh Advocate
with Mr. Vivek Kumar, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. In the criminal case registered on the basis of report (charge sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.), submitted upon conclusion of investigation into first information report (FIR) No.30/2008 of Police Station Model Town, the petitioners were summoned as accused to answer the accusations for offences punishable under Sections 380/420/452 of the Indian Penal Code, 1860 (IPC). After securing their presence, and compliance under Section 207 Cr.P.C., the Metropolitan Magistrate considered the question of charge. By order dated 26.11.2013, he

found no grounds to put the petitioners on trial on the charge for offences under sections 452/380 IPC, but directed that there were sufficient grounds to proceed against them on the charge under section 420 read with section 34 IPC. The petitioners challenged the said order in the court of sessions by criminal revision petition No.14/2014, which was dismissed by the said court by order dated 14.12.2015, the order of the Metropolitan Magistrate having been upheld.

2. The background facts, in a nutshell, are that a building named and styled as '*Park View Apartments*' was developed on a plot of land described as D-143-144, forming part of khasra No.359/5, situated in the colony known as Mahendru Enclave, G.T. Karnal Road, Delhi by the petitioners, joining hands with certain others including Prabhat Kumar Singh (the complainant), he being the Managing Director of M/s. Mahendra Developers Pvt. Ltd. The building comprises of sixteen flats, parking space for vehicles and servant rooms meant for each being added. Some of the flats were sold by the company, they including flat No.G-1. It appears that the right to sell the said flat (G-1) was given to the second petitioner, she and her father (i.e., the first petitioner) having together indulged in certain acts of commission and omission.

3. The conferment of the power to sell flat (G-1) upon the second petitioner was through a document styled as General Power of Attorney (GPA) dated 15.01.2002 executed by the complainant. It described the said flat by referring to what was included within and adding, *inter alia*, that the same also covered "*all other common*

facilities and amenities” as available in the aforesaid building. The second petitioner entered into an agreement to sell the property in favour of one Aruna Sharma on 05.07.2002, on the strength of the above mentioned GPA but differently describing the property offered to be sold referring it to be “*along with one common of office room on basement floor*” though adding that it was to be used by other occupants of the building.

4. Aruna Sharma appears to have understood the above agreement to mean that the office room (on the ground floor level) was part of the property purchased by her, this being the import of the representation made to her by the petitioners. She took control of the said office room by putting her own lock. Protests by occupants of the other flats in the building followed. Besides civil litigation, a complaint was lodged with the police, this resulting in FIR being registered, the charge sheet filed wherein and orders passed whereupon, have led to this petition being presented.

5. The petitioners challenge the orders of the two courts below by the petition at had invoking inherent power and jurisdiction of this court under Section 482 Cr.P.C. It is their contention that there was no intention of cheating, no misrepresentation having been made by them. It is also their contention that the allegations in the FIR were directed against conduct of Aruna Sharma but she being influential has been left out. The petitioners seek to rely upon certain documents concerning transfer of certain other portions in the same building in

support of their contentions, such material being extraneous to the material on which the impugned order were passed.

6. Against the above backdrop, question arose as to whether the petitioners having availed of the remedy of revision should be allowed to have recourse to the petition at hand as a substitute for virtually a second revisional challenge or scrutiny which is clearly barred under Section 397 (3) Cr.P.C.

7. This Court in an almost similar fact-situation, taking note of the decisions of the Supreme Court reported as *Krishnan Vs. Krishnaveni*, (1997) 4 SCC 241; *Rajinder Prasad Vs. Bashir*, (2001) 8 SCC 522 and *Kailash Verma vs. Punjab State Civil Supplies Corporation & Anr.*, (2005) 2 SCC 571 and following similar view taken by a learned single Judge of this Court in *Surender Kumar Jain vs. State & Anr.*, ILR (2012) 3 Del 99 in absence of a special case being made has earlier declined to interfere by the ruling (dated 03.07.2018) in Crl.M.C. 164/2018 *Ajay Maini vs. The State Govt. of NCT of Delhi & Ors.* in exercise of extraordinary jurisdiction under Section 482 Cr.P.C.

8. There are no special circumstances made out in the case at hand for the revisional court's view to be disturbed. The contentions raised, at best, give rise to the questions of facts which cannot be addressed conclusively in the jurisdiction under Section 482 Cr. PC. In this context, the following observations of the Supreme Court in *Rajiv Thapar and Ors. Vs. Madan Lal Kapoor*, (2013) 3 SCC 330 need to be borne in mind.

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the

accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.”

(emphasis supplied)

9. Whether or not the allegations about misrepresentation by the petitioners are true and whether or not there was any justification for the surplus words in the agreement to sell regarding description of the property being conveyed are matters which will have to be determined at the trial.

10. The petition and the application filed therewith are dismissed.

R.K.GAUBA, J.

JANUARY 24, 2019

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